S.B. Civil Writ Petition No. 5516/2004
(Dilip Gupta V/s Rajendra Kumar and Ors.)

Date of Order : 09/12/2004

HON'BLE MR. PRAKASH TATIA,J.

Mr. J.R. Patel, for the petitioner/s

Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order dated 6.10.2004, by which the First Appellate Court set-aside the order of the trial court dated 14.10.2003 and held the last paid rent by the petitioner of the premises is Rs.1,000/- and determined the rent under Section 13(3) of the Act of 1950, on the basis of Rs.1,000/- per month.

Learned counsel for the petitioner submits that the rent receipt produced by the plaintiff, copy of which is placed on record as Annexure-1 is a forged document. It is also submitted that the petitioner is Dilip Gupta whereas the receipt is in the name of Anil Kumar Gupta. It is also submitted that though the petitioner is Dilip Gupta but since the suit has been filed by the petitioner's landlord impleading Anil Kumar Gupta S/o Shri Prahalad Ram Gupta as a defendant, therefore, the petitioner submitted the written statement. According to the learned counsel for the petitioner increase in the rent is exorbitant and high.

I perused the facts of the case. It appears that the petitioner wants to raise dispute about all

the question of facts, which can be determined after evidence in the suit and not here. Whether the receipt is forged one and whether the Dilip Gupta and Anil Gupta are the same person or not cannot be determined here.

Otherwise also looking to the claim of the petitioner that the rent of the shop was Rs.200/- per month then the amount on which the rent was determined, cannot be interfered at this stage in the writ jurisdiction.

Learned counsel for the petitioner submits that the First Appellate Court included some payments which petitioner already made to the landlord. If it is so then the petitioner may approach to the First Appellate Court by moving an appropriate petition before the First Appellate Court and in case the First Appellate Court thinks it proper, may pass an appropriate order to do the justice.

In view of the above, the writ petition is dismissed. However, the petitioner is granted time upto the maximum period available for depositing the rent in the trial court in pursuance of the appellate order.

(PRAKASH TATIA)J.

RM/